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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,731	02/10/2004	Bret O. Baynham	2380.005	2815
21917	7590	01/11/2008		
MCHALE & SLAVIN, P.A. 2855 PGA BLVD PALM BEACH GARDENS, FL 33410			EXAMINER COMSTOCK, DAVID C	
			ART UNIT	PAPER NUMBER
			3733	
			MAIL DATE	DELIVERY MODE
			01/11/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/776,731

Applicant(s)

BAYNHAM ET AL.

Examiner

David Comstock

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 June 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 16 November 2007 has been entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mangione et al. (6,585,738) in view of Assaker et al. (6,652,525; cited by applicant).

Mangione et al. disclose a rigid spinal fixation plate 4 comprising ends 8, 10 that are wider than an intermediate length 6 (see Figs. 1 and 7). The intermediate length is asymmetrically connected to the ends. There are two holes 46, 48 at each end. The holes have a countersunk depression 50, 52 with a continuous sidewall connected to a bottom wall. A plurality of bone screws 12, 14 with enlarged heads 22, 32 engage the

bottom of the holes. The screws have an internal diameter, a leading end with flutes, and are configured for engagement with vertebral bone (see col. 2, lines 40-44 and 59-61). The countersunk holes comprise adjustable, diverging axes (see Figs. 1 and 2). The plate is curved (see Fig. 5). Mangione et al. disclose the claimed invention except for a slot forming a cavity between the distal and proximal surfaces and slidable screw locks in the slots and depressions. Assaker et. al. disclose a spinal plate 1 comprising a slot forming a cavity 26a between distal and proximal surfaces and slidable screw locks 22 within the slots and depressions in order to prevent the screws from backing out, without increasing the size of the plate, and to improve the reliability and safety of the device (see, e.g., Figs. 1-6 and col. 1, line 11 - col. 2, line 7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the spinal plate of Mangione et al. with a slot forming a cavity between distal and proximal surfaces of the plate and with slidable screw locks within the slots and depressions, in view of Assaker et al., in order to prevent the screws from backing out, without increasing the size of the plate, and to improve the reliability and safety of the device. The locks comprise extensions, e.g. 25, that pass through portions of the ends of the device whereat the locks are removable. It would have been further obvious to have provided the slot forming a cavity with dimensions (e.g. length, width, thickness) within any of numerous ranges, for example, to optimize the size, strength or appearance of the device, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

### ***Response to Arguments***

Applicant's arguments filed 16 November 2007 pertaining to the amended claims have been fully considered but are not persuasive.

An additional basis of rejection has been included above that addresses Applicant's arguments and claim amendments.

It is still maintained that the slot is enclosed, at least as between inner sidewalls of the plate. In addition, the lock within the slot can be considered elongate and a narrow extension thereof passes through the side wall via the slot (see, e.g. Figs. 2 and 3).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710. Please leave a detailed voice message if examiner is unavailable. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.


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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



D. Comstock



EDUARDO C. ROBERT  
SUPERVISORY INTENT EXAMINER